

FINAL PRETRIAL ORDER

MAGISTRATE JUDGE MICHAEL T. MASON
219 South Dearborn Street
Courtroom 2214 Chambers 2206
Chicago, IL 60604
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PREPARATION OF FINAL PRETRIAL ORDER AND OTHER TRIAL PREPARATION MATERIALS

FOR CONSENT CASES BEFORE MAGISTRATE JUDGE MASON

THE FINAL PRETRIAL ORDER.

In consent cases, the Court will require the parties to jointly prepare and submit a final pretrial order in open court. In each particular case, the court will set the date on which the final pretrial order is to be filed. The final pretrial order (including the Court's courtesy copy) must be appropriately tabbed, and must include the following items.

1. Jurisdiction. A statement of the basis alleged for the Court's jurisdiction and, if jurisdiction is disputed, the nature and basis of the dispute.

2. Case Statement. A concise joint statement of the case, which includes the names of the parties and the attorneys who will be representing them at trial; the nature of the case; the claims, counterclaims and cross-claims; and the defenses raised to those claims. In a jury case, this statement will be read to the jury during *voir dire*.

3. Stipulations. A statement of any stipulations reached by the parties.

4. Witness Lists. Separate lists for plaintiff and defendant providing the names and addresses of witnesses, including experts, divided into the following three categories: (a) witnesses who **will** be called to testify at trial; (b) witnesses who **may** be called to testify at trial; and (c) witnesses whose testimony will be presented by deposition or other prior testimony (indicating whether the presentation will be by transcript or video). In a jury case, these lists will be read to the jury during *voir dire*.

All experts witnesses who will or may be called must be included on the witness list. No more than one expert will be permitted to testify on a subject for any party. In the event that any party identifies more than one expert witness, a brief

statement of the topic of each expert's testimony must be provided.

All objections to the calling of any witnesses, and the reasons for the objections, must be stated in the pretrial order. For witnesses who will be presented by deposition or other prior testimony, the pretrial order must include for each such witness a chart containing the following information: (a) the testimony that each side seeks to present, by page and line; (b) a concise statement of objections to any testimony and the basis for the objection; and (c) a concise statement of the asserted basis of admissibility.

5. Exhibit Lists. Lists of the trial exhibits (including demonstratives, summaries or other specially prepared exhibits), which are to be prepared in the following manner:

A list of any joint exhibits, which states: (a) the exhibit number for the document (preceded by "JX"); (b) the date of the document; and (c) a brief description of the document.

Separate lists of plaintiff's and defendant's exhibits, which each state: (a) the exhibit number for the document (preceded by "PX" for plaintiff's exhibits and "DX" for defendant's exhibits); (b) the date of the document; (c) a brief description of the document; (d) whether there is an objection to admission of the document and, if so, a concise statement of the basis for the objection (e.g., Rule 402-relevance; Rule 403 - undue prejudice or confusion); and (e) a concise statement of the asserted basis of admissibility.

6. Estimate of Trial Time. A statement of whether the case will be a bench trial or jury trial, and a realistic estimate – **in numbers of hours** – of the length of the trial.

7. Damage Itemization. An itemization of damages and other relief sought.

8. Motions *In Limine*. A list of the titles of all motions *in limine* filed by each party. The actual motions *in limine* are not to be bound with the final pretrial order, but must be submitted separately in open court at the time the final pretrial order is presented. **The parties are reminded that the Court's Case Management Procedures require compliance with Local General Rule 12(k) before filing any motions, including motions in limine.** Motions *in limine* shall be filed no later than twenty-one days before trial and responses no later than fourteen days before trial.

The above-referenced materials must be submitted with a cover document setting forth the case caption and the title FINAL PRETRIAL ORDER no later than 21 days before trial. The cover document: (a) must recite that each of the foregoing categories of materials is included, (b) after that recitation, must state that "This Order will control the course of the trial and may not be amended except by consent of the parties, or by order of the Court to prevent manifest

injustice,” and (c) must provide spaces for the signature of counsel for each of the parties and by the Court. The parties are strongly encouraged to work together in drafting their Final Pretrial Order, and to come to agreement to the fullest extent possible.

OTHER MATERIALS TO BE FILED BEFORE TRIAL.

- ! **Proposed Findings and Conclusions.** In a bench trial, proposed findings of fact and conclusions of law are not to be included in the final pretrial order, but are to be separately filed (with courtesy copies delivered to chambers) seven (7) calendar days before trial.
- ! **Proposed Voir Dire and Instructions.** In a jury trial, proposed *voir dire* directions and jury instructions are not to be included in the final pretrial order, but are to be separately filed with courtesy copies delivered to chambers. The proposed *voir dire* and *jury instructions* are to be prepared and submitted according to the following schedule:

Proposed Voir Dire. The Court’s general *voir dire* questions can be obtained from the website or from the courtroom deputy. By no later than seven (7) calendar days before trial, the parties must file a joint document that includes both (a) each party’s proposed *voir dire* questions, and (b) each party’s objections, if any, to the *voir dire* questions proposed by other parties.

Jury Instructions. The parties are instructed to meet and attempt to agree on jury instructions and to file proposed instructions by no later than seven (7) days before trial. Judge Mason has his own preliminary and general jury instructions, which can be obtained from chambers or the Court’s homepage on the internet. Therefore, the parties should concentrate their efforts on the substantive jury instructions related to the merits. **The Court adopts the requirement in Local General Rule 5 that “[a]greed instructions shall be presented by the parties whenever possible,” and that “the parties are expected to agree on all instructions other than those about which there is a genuine, material dispute.”** By no later than seven (7) calendar days before trial, the parties must file a joint document setting forth all agreed and proposed jury instructions as follows:

- The joint document must set forth all proposed prefatory instructions, arranged in the order that the parties propose they be given.
- The joint document must set forth all instructions that the parties propose to be given at the close of trial, arranged in the order that the parties proposed they be given.

- Each proposed instruction must be identified at the top of the page by number, and must indicate the proponent of the instruction and whether the instruction agreed or disputed (e.g., “Agreed Plaintiff’s Proposed Prefatory Instruction No. ____”; “Defendant’s Disputed Proposed Final Instruction No. ____”). The bottom of each instruction must identify the legal authority supporting that instruction. If an instruction is disputed, the grounds for the objection (and any proposed modification or alternate instruction) must be concisely stated on the page immediately following the disputed instruction; on the next immediate page, the party proposing the instruction may state concisely the reasons supporting the instruction as proposed.

These dates for exchange of drafts and personal consultation regarding voir dire and jury instructions may be varied only by written agreement of the parties or by Court order.

- ! Trial Briefs.** Trial briefs are not required in either bench or jury trials. Any party who wishes to file a trial brief must seek leave of the Court to do so.

THE FINAL PRETRIAL CONFERENCE

A final pretrial conference will be held approximately one week before trial. At the pretrial conference, the Court will address pending motions *in limine*, objections to exhibits, and objections to designations of depositions or other prior testimony. At that time, the Court also will discuss with the parties trial procedures and scheduling. The purpose of this conference is to avoid surprises and simplify the trial. **Trial counsel, fully prepared, and with authority to discuss all aspects of the case must attend.**

ENTER:

**MICHAEL T. MASON
United States Magistrate Judge**

Dated: September 19, 2002